

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

RITO LOPEZ,
Plaintiff,
v.
EUROFINS SCIENTIFIC, INC, et al.,
Defendants.

Case No. 21-cv-08652-LB

ORDER REGARDING PRELIMINARY APPROVAL

Re: ECF No. 56

In this putative class action, the plaintiff, who works as a packer, sued his alleged employers — Eurofins Scientific, Environmental Sampling Supply, and TestAmerica Laboratories — claiming that they did not pay him for the following off-the-clock work: (1) completing temperature checks and COVID-19 screening questionnaires before clocking in for work (one minute and often longer) and (2) waiting in line to clock back in after meal breaks (at least two additional minutes). As a result, he claims that the defendants failed to pay the class members for all hours worked, failed to pay minimum wages and overtime wages, did not provide accurate wage statements, failed to provide meal and rest periods, failed to timely pay wages during

1 employment and at termination, are subject to penalties under the California Private Attorneys
2 General Act (PAGA), and violated California's Unfair Competition Law (UCL).¹

3 The parties settled their case,² and the plaintiff moved for preliminary approval of the
4 proposed settlement under Federal Rule of Civil Procedure 23(e).³ The court held a hearing on
5 June 22, 2023, and asks the parties to address certain language in the settlement's release before
6 the court preliminarily approves the settlement.

7 The existing release is potentially overbroad. The Ninth Circuit allows only releases that are
8 "based on the identical factual predicate as that underlying the claims in the settled class action."
9 *Hadley v. Kellogg Sales Co.*, No. 16-CV-04955-LHK, 2020 WL 836673, at *2 (N.D. Cal. Feb. 20,
10 2020) (quoting *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010)). Thus, "[d]istrict courts
11 in this Circuit have declined to approve settlement agreements where such agreements would
12 release claims that are 'factually related' to the claims in the instant litigation." *Chavez v. PVH*
13 *Corp.*, No. 13-CV-01797-LHK, 2015 WL 581382, at *5 (N.D. Cal. Feb. 11, 2015) (collecting
14 cases).

15 The settlement here releases "any and all claims alleged, or that could have been alleged based
16 on the facts alleged, related to, or ascertained in the Action."⁴ The "related to" language is
17 addressed in the above cases. The "ascertained in" language could be fine but is nonspecific. The
18 court thus asks the parties to update the court by July 6, 2023 about their plan to address the
19 release language. Manual for Complex Litigation, Fourth, § 21.61 (a court may impose
20 "conditions for approval" and "[t]he parties might be willing to make changes before the notice of
21 the settlement agreement is sent to the class members if the judge makes such suggestions at the
22 preliminary approval stage") (citing *In re Auction Houses Antitrust Litig.*, No. 00 CIV. 0648
23 (LAK), 2001 WL 170792, at *18 (S.D.N.Y. Feb. 22, 2001), *aff'd*, 42 F. App'x 511 (2d Cir. 2002),
24

25 ¹ Second Am. Compl. (SAC) – ECF No. 55. Citations refer to material in the Electronic Case File
26 (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

27 ² Settlement Agreement, Ex. A to Cottrell Decl. – ECF No. 56-2 at 2–24.

28 ³ Mot. – ECF No. 56.

⁴ *Id.* at 8 (§ 20).

1 and *Romstadt v. Apple Computer, Inc.*, 948 F. Supp. 701, 707 (N.D. Ohio 1996)). As discussed at
2 the hearing, a stipulated complaint could be part of the solution. For now, the court also sets a
3 status hearing for July 13, 2023 on the release issue.

4 **IT IS SO ORDERED.**

5 Dated: June 22, 2023



6
7 LAUREL BEELER
United States Magistrate Judge